

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:08-CV-296-D

SABRINA KENON,

Plaintiff,

v.

N.C. DEPARTMENT OF CORRECTION,
et al.,

Defendants.

ORDER


On October 8, 2008, defendant Dwight Williams (“Williams”) filed a motion to dismiss [D.E. 11]. On October 28, 2008, plaintiff responded in opposition [D.E. 15] and also filed a motion for leave to amend her complaint in order to make clear that she is seeking relief from Williams in his individual capacity [D.E. 13]. Williams opposes the motion to amend because it “is designed to negate” Williams’ motion to dismiss [D.E. 17].

Rule 15(a)(1)(A) of the Federal Rules of Civil Procedure provides that “a party may amend its pleadings once as a matter of course . . . before being served with a responsive pleading.” Fed. R. Civ. P. 15(a)(1)(A); see Smith v. Blackledge, 451 F.2d 1201, 1203 n.2 (4th Cir. 1971). “A motion to dismiss is not a responsive pleading for the purposes of Rule 15(a).” Domino Sugar Corp. v. Sugar Workers Local Union 392, 10 F.3d 1064, 1068 n.1 (4th Cir. 1993); see Time Warner Entm’t–Advance/Newhouse P’ship v. Carteret-Craven Elec. Membership Corp., 451 F. Supp. 2d 736, 738 (E.D.N.C. 2006), aff’d, 506 F.3d 304 (4th Cir. 2007). Thus, because defendants have not filed a responsive pleading, plaintiff may amend her complaint as a matter of course.

Accordingly, plaintiff’s motion to amend [D.E. 13] is GRANTED. Plaintiff shall file a single,

complete first amended complaint with the changes reflected in her motion to amend, not later than December 22, 2008. Defendants may plead in response to the first amended complaint in accordance with the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 15(a)(3). Defendant Williams' motion to dismiss [D.E. 11] is DENIED as moot.

SO ORDERED. This 11 day of December 2008.


JAMES C. DEVER III
United States District Judge